

US EPA RECORDS CENTER REGION 5



471686

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DRAFT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
CITY OF ALBION, MICHIGAN)
)
Defendant.)
_____)

Case No. 1:97-CV-1037

Hon. David W. McKeague

UNITED STATES' RESPONSE TO CITY OF ALBION'S
FIRST SET OF INTERROGATORIES, FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS AND FIRST REQUESTS FOR ADMISSIONS

Plaintiff, the United States of America ("United States") by and through its attorneys, pursuant to Rule 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, hereby objects and responds to Defendant City of Albion's First Set of Interrogatories, Requests for Admission, and Request for the Production of Documents to the United States.

GENERAL OBJECTIONS

1. The United States objects to all Interrogatories, Requests for Admissions, and Document Requests to the extent that they seek to impose any duties or obligations upon the United States beyond those imposed by the Federal Rules of Civil Procedure and the Local Rules of this Court. The United States objects to the City of Albion's service of discovery to the

extent it is inconsistent with Fed. R. Civ. P. 26(d).

2. The United States objects to all Interrogatories, Requests for Admissions, and Document Requests to the extent they call for information or documents that are subject to the attorney-client privilege, attorney work product protection, Rule 26(b) of the Federal Rules of Civil Procedure, the deliberative process privilege, or claims of business information confidentiality, or any other privilege or grounds for withholding information or documents, and the United States declines to provide any such information or documents to which such privileges or immunities attach.

3. Plaintiff objects to the City of Albion's First Set of Interrogatories, First Requests for Production of Documents, and First Requests for Admissions to the extent they seek documents that are already in Defendant City of Albion's possession. Plaintiff objects to City of Albion's discovery to the extent it seeks information and documents long available to the public in the Albion-Sheridan Township Landfill Superfund Site ("Site") Administrative Record File and Active Site File maintained in the United States Environmental Protection Agency ("EPA"), Region 5, Superfund Division Records Center, Region V (5H-7J), 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number:

(312) 353-5821 and in the public Site Administrative Record repository located in the Albion Public Library, 501 South Superior Street, Albion, Michigan 49224, and pursuant to Fed. R. Civ. P. 33(d), Plaintiff refers the City of Albion to such documents.

4. The United States objects to all Interrogatories, requests for admissions, and Document Requests to the extent that they would require the United States to conduct research and investigations to the acquire information not presently within its possession, that the City of Albion can perform or compile, or would require the United States to compile or evaluate information in a manner that is unduly burdensome or oppressive.

5. The United States objects to each Interrogatory, Request for Admission, and Document Request calling for any answer requiring "each," "all" and "every" on the grounds that such Interrogatories and production requests are overly broad, unduly burdensome, and oppressive. The United States further objects that it had not completed its investigation of facts relating to the actions. Discovery and the United States' search for documents and related material is ongoing. The response of the United States are set forth herein without prejudice to its rights to assert additional objections or provide supplemental

responses should the United States discover additional information or grounds for objections.

6. To the extent that the United States answers these Interrogatories, Requests for Admissions, and Document Requests, the United States does not concede that the information requested is relevant to this action. The United States expressly reserves the right to object to further discovery of the subject matter of any of these Interrogatories, Requests for Admissions, and Document Requests and the introduction into evidence of any answer or portion thereof or any document produced in response to these Interrogatories, Requests for Admissions, and Document Requests. The United States further objects to all Interrogatories that prematurely and improperly demand a legal conclusion and seek to require the United States to provide legal contentions by way of Interrogatories.

7. The United States objects to all Interrogatories, requests form admissions, and Document Requests to the extent they require the United States to detail its legal conclusions and require the United States to detail its legal contentions and supporting facts on the grounds that such requests are premature at this state of discovery.

8. Plaintiff objects to the City of Albion's discovery to

the extent that it seeks discovery of any issues subject to review based solely on an Administrative Record.

9. Plaintiff objects to the City of Albion's Interrogatories as being in excess of the number of Interrogatories allowed by the Local Rules of the Court.

10. The United States incorporates these general objections into its answer to each Interrogatory, Request for Admission, and Document Request as if fully set forth therein and each such answer is subject to these general objections.

PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

1. Produce all documents relating to the "response costs" allegedly incurred and to be incurred by Plaintiff with regard to the Sheridan Township Landfill Site at issue on the Complaint in the captioned action (the "Site").

RESPONSE:

1. Please see Cumulative Cost Summary prepared September 17, 1997. Additional cost documents accompany these Plaintiff's Responses to Defendant's First Interrogatories, Requests for Production of Documents and Requests for Admissions. Plaintiff's investigation into the facts continues.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:**DRAFT**

2. Produce all documents supporting the consistency of Plaintiff's "response costs" with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

RESPONSE:

2. Plaintiff objects to this Document Request on the grounds that this Request seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. In an action by the United States, the Defendant has the burden of demonstrating inconsistency with the National Contingency Plan, and the Defendant in such an action may not shift to the United States the burden of proof on this issue. Plaintiff objects to this Document Request to the extent it seeks discovery on legal issues. Plaintiff objects to this Document Request to the extent it seeks discovery of any issues subject to review solely on an Administrative Record. Plaintiff objects further to the extent that this request seeks production of documents that are protected by the attorney client privilege and the attorney work product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File, the Active Site file and the cost documentation and summaries for the Site, some

of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

Notwithstanding and without waiving these objections, Jon Peterson and Leah Evison, Regional Program Managers, possess information that the United States' response costs are not inconsistent with the National Contingency Plan, and Darius Taylor and Sylvester Colletti possess information about U.S. EPA's response costs. Addresses and telephone numbers are as follows:

Leah Evison
Remedial Project Manager
U.S. EPA, Region 5 (HSRM-6J)
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-7089

Jon Peterson
Remedial Project Manager
U.S. EPA, Region 5 (HSRM-6J)
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-7089

Darius Taylor
Financial Management Office
Superfund Accounting Section
U.S. EPA, Region 5 (SMF-10J)
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 353-3241

Sylvester Colletti
Final Review Accountant
Financial Management Office
U.S. EPA, Region 5 (SMF-10J)
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 353-5399

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:

3. Produce all documents relating to the allegation in Paragraph 6 of the Complaint that Defendant "contracted with the Site owner to operate the Albion-Sheridan Landfill Site. . ."

RESPONSE:

3. Plaintiff objects to this Document Request to the extent it seeks production of documents available to the City of Albion. Notwithstanding and without waiving its objections, copies of the following documents are attached to the United States' response to this discovery. The United States' search for responsive documents continues.

a. Contract between the City of Albion and Gordon D. Stevick dated 5/24/66;

b. Contract between the City of Albion and Gordon D. Stevick dated 6/26/72;

DRAFT

c. Contract between the City of Albion and Gordon D.

Stevick dated 3/1/78;

d. Letter from Neal Godby, City Manager, to City

Clerk re: June 1972 contract;

e. Letter dated 10/31/78 from Lee Davis, City Manager to Michigan Department of Natural Resources seeking a meeting re: the landfill site;

f. Excerpts from minutes from Proceedings of City of Albion Common Council meeting for 1966, particularly 3/21/66, 3/23/66, 7/18/66, 8/22/66, 9/19/66, 11/7/66, and 12/5/66;

g. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings for 1967, particularly 6/19/67, 10/2/67, 11/6/67, 11/20/67, and 12/4/67;

h. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings for 1968, particularly 4/9/68;

i. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings for 1969, particularly 5/26/69, 8/4/69;

j. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings for 1970, particularly 2/16/70, 4/6/70, 4/20/70, 5/4/70, and 5/25/70;

k. Excerpts from minutes from Proceedings of City of

Albion Common Council Meeting for 1972, particularly, 3/20/72;

1. Excerpts from minutes from Proceedings of City of Albion Common Council Meetings from 1977, particularly, 2/7/77, 2/21/77.

Persons with information and knowledge concerning the contracts and agreements between the City of Albion and Gordon Stevick are identified in these documents and include, but are not limited to Neal A. Godby, City Manager in 1972; Lyle M. Johnson, City of Albion Mayor in 1966; Charles W. Jones, City of Albion Mayor in 1975; Lee Davis, City Manager in 1978; William Rieger, City Manager in 1966. The United States is not currently aware of the location of ^{these} ~~thee~~ persons. The United States' search for responsive documents continues.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4:

4. Produce all PRP Search Reports and related materials prepared for, by, or furnished to Plaintiff or U.S. EPA, with regard to persons potentially responsible for the Site contamination alleged herein.

RESPONSE:

The United States objects to this request to produce on the extent that it seeks the production of information subject to the attorney work product privilege. See, Hickman v. Taylor, 329 U.S. 495 (Jan.13, 1947); Upjohn Company v. United States, 449 U.S. 383

(Jan. 13, 1981). Notwithstanding and without waiving this objection, the United States will provide City of Albion with access to additional documents, that are available in the Administrative Record and the Active Site File for the Site, and will be made available to the City of Albion by Plaintiff at a mutually agreed upon time and place. In addition, the United States attaches documents responsive to this Request. The United States' search for responsive documents continues.

PREP SEARCH
FILE ARE ANY
WORK PROD

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5:

5. Produce all documents identified in the accompanying Interrogatories.

RESPONSE:

5. Plaintiff objects to this Interrogatory as being vague and ambiguous. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to the term "all documents identified," as overbroad and unduly burdensome. Subject to and without waiving these objections, please see Responses to Interrogatories and documents accompanying these discovery Responses. Plaintiff's search for facts and relevant documents continues.

DRAFT

PLAINTIFF'S RESPONSES
TO DEFENDANTS FIRST SET OF
INTERROGATORIES

INTERROGATORY NO. 1:

1. For each and every of the following questions, please identify by name, title, and address, each person(s) providing information for Plaintiff's Answer to that particular Interrogatory.

RESPONSE:

1. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory to the extent that it seeks information protected by the attorney work product doctrine or the attorney-client privilege. Notwithstanding and without waiving its objections, Leah Evison, Remedial Project Manager; Jon Peterson, Remedial Project Manager; Kathleen Schnieders, Attorney Advisor; and Francis J. Biros, Trial Attorney. In addition, please see also Responses to Interrogatories 2-19.

INTERROGATORY NO. 2:

2. State whether Plaintiff has ever claimed that Decker Manufacturing is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

2. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA issued a notice letter under CERCLA to Decker Manufacturing on June 6, 1995 and issued the same administrative order to Decker Manufacturing that it issued to the City of Albion on October 11, 1995. In each of these documents, U.S. EPA identified Decker Manufacturing as a potentially responsible party liable under Section 107(a) of CERCLA.

2(a) The United States objects to this subpart to the extent

that it seeks information that is subject to the attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

2(b) Decker Manufacturing was identified as a such a person.

INTERROGATORY NO. 3:

3. State whether Plaintiff has ever claimed that Corning, f/k/a/ Corning Glass Works, is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

3. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this

Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA a issued notice letter under CERCLA to Corning on June 3, 1991 and June 6, 1995 and issued the same administrative order to Corning on October 11, 1995, as it issued to the City of Albion. In each of these documents, U.S. EPA identified Corning as a potentially responsible party liable under Section 107(a) of CERCLA.

3(a) The United States objects to this subpart to the extent that it seeks information that is subject to the attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention

to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

3(b) Corning was identified as such a person.

INTERROGATORY NO. 4:

4. State whether Plaintiff has ever claimed that Eagle-Pitcher Industries f/k/a/ Union Steel, is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

4. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United

States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA issued a notice letter under CERCLA to Eagle-Picher Industries f/k/a Union Steel on June 3, 1991, and an Unilateral Administrative Order on March 19, 1990. In these documents, U.S. EPA identified Eagle-Picher Industries f/k/a Union Steel as a potentially responsible party liable under Section 107(a) of CERCLA.

4(a) The United States objects to this subpart to the extent that it seeks information that is subject to the attorney work-product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide

Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

4(b) Eagle-Picher Industries f/k/a Union Steel was identified as such a person.

INTERROGATORY NO. 5.:

5. State whether Plaintiff has ever claimed that Cooper Industries, Inc, f/k/a/ McGraw-Edison, is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

5. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to

Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA issued notice letters under CERCLA to Cooper Industries, Inc, f/k/a/ McGraw-Edison on June 3, 1991 and June 6, 1995 and issued the same administrative order to Cooper Industries, Inc, f/k/a/ McGraw-Edison on October 11, 1995, that it issued to the City of Albion. In each of these documents, U.S. EPA identified Corning as a potentially responsible party liable under Section 107(a) of CERCLA.

5(a) The United States objects to this subpart to the extent that it seeks information that is subject to the attorney work product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the

DRAFT

Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

5(b) Cooper Industries f/k/a McGraw Edison was identified as such a person.

INTERROGATORY NO. 6:

6. State whether Plaintiff has ever claimed that Gordon Stevick (or his Estate, heirs, assigns or transferees) is a person liable for the Sheridan Township Landfill Site pursuant to CERCLA Section 107(a), 42 U.S.C. 9607(a).

a. If so, what facts were considered in this determination?

b. If so, what determination was made?

RESPONSE:

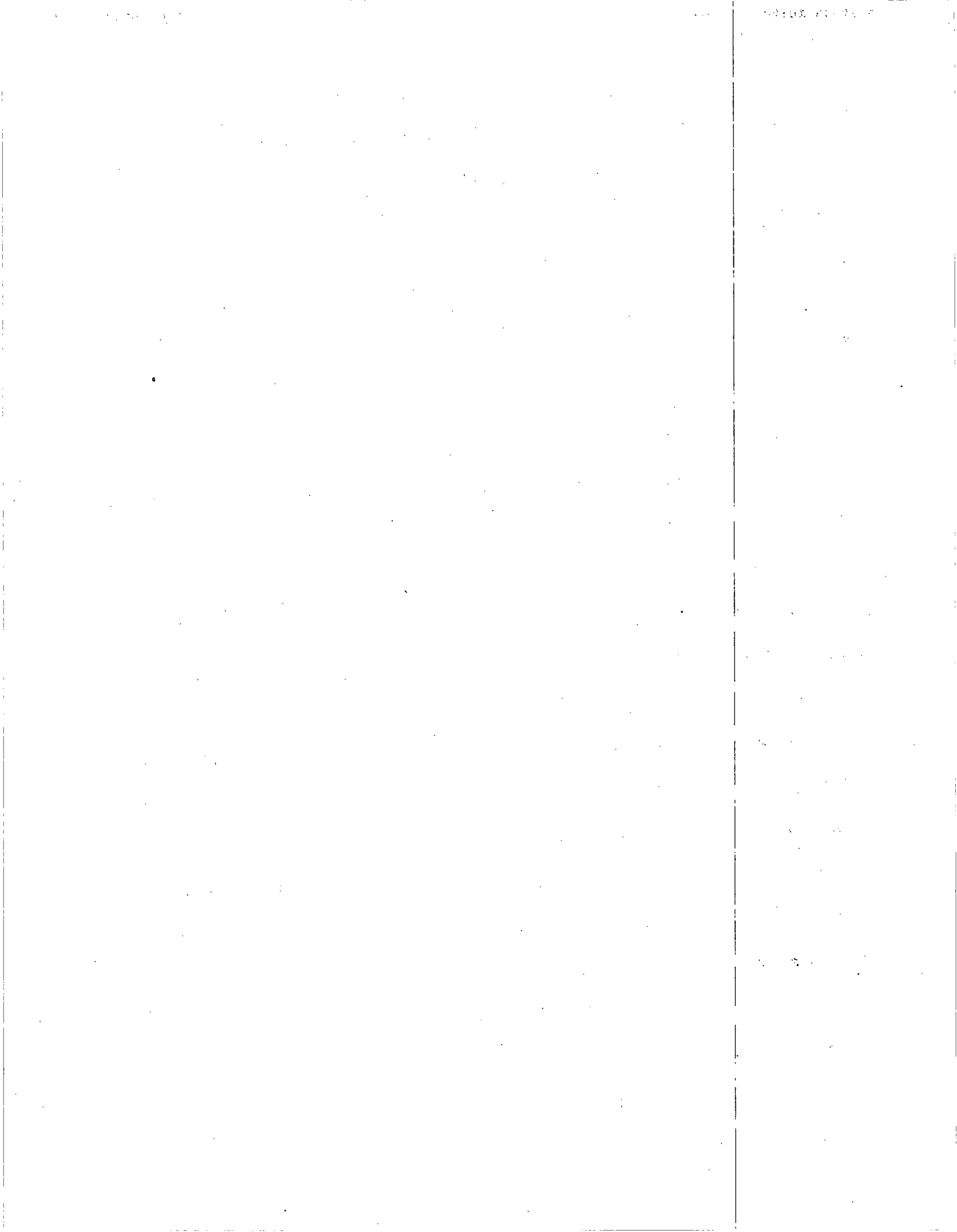
6. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to Section 107 of CERCLA; a declaration of the City of Albion's

liability for future response costs to be incurred by the United States pursuant to Section 113(g) (2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

Notwithstanding and without waiving these objections, U.S. EPA issued a notice letter under CERCLA to Gordon Stevick on June 3, 1991 and issued an administrative order to Gordon Stevick on March 19, 1990. In each of these documents, U.S. EPA identified Gordon Stevick as a potentially responsible party under Section 107(a) of CERCLA.

6(a) The United States objects to this subpart to the extent that it violates the attorney work product privilege.

Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The



United States' search for responsive documents continues.

6(b) Gordon Stevick was identified as such a person.

INTERROGATORY NO. 7:

7. State all facts, reasons, and documents which support the statement by the U.S. EPA Assistant Regional Counsel Kurt Lindland on September 24, 1997, that the City of Albion and other parties are liable for the claimed unreimbursed response costs, and the basis for his personal knowledge.

RESPONSE:

7. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory as overbroad and unduly burdensome. Plaintiff further objects that this Interrogatory prematurely and improperly demands a legal conclusion and seeks to require the United States to provide legal contentions by way of Interrogatory. The United States further objects to this Interrogatory to the extent that it requires the United States to detail its legal contentions and supporting facts on the grounds that such requests are premature at this stage of discovery. The United States also objects that this inquiry seeks documents such as notes of interviews taken by any attorney which are protected by the attorney work product doctrine and will not be produced. See, Hickman v. Taylor, 329 U.S. 495 (Jan 1, 1947); Upjohn Company v. United States, 449 U.S. 383 (Jan. 13, 1981)

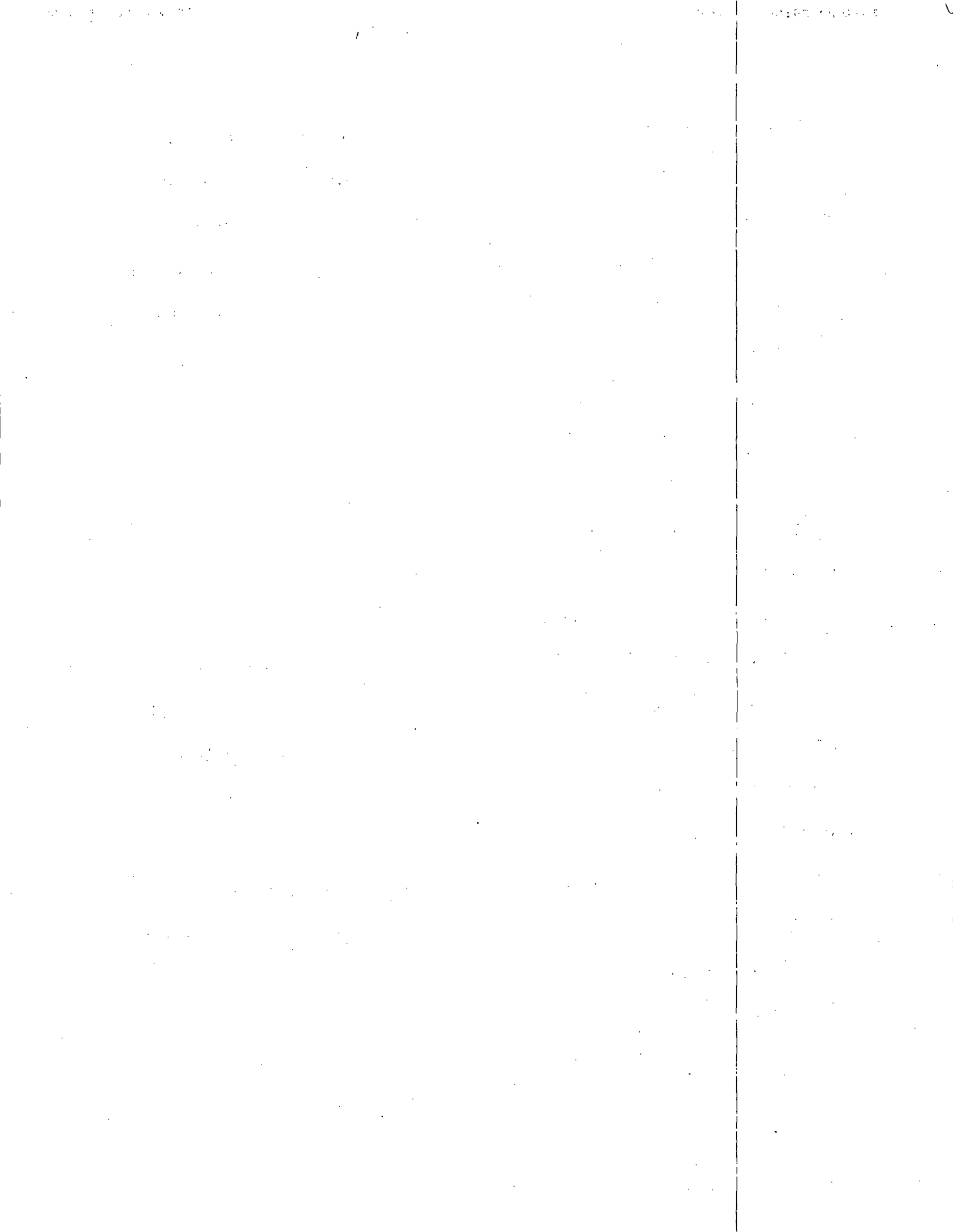
Notwithstanding and without waiving the foregoing objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

INTERROGATORY NO. 8:

8. Identify all persons Plaintiff has at any time considered to be potentially responsible or liable for the Site contamination at issue.

RESPONSE:

8. Plaintiff repeats the objections stated in the General Responses and Objections above, and objects further to this Interrogatory in that it seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence in this action. The United States brought this action against the City of Albion seeking recovery of unreimbursed response costs at the Site pursuant to



Section 107 of CERCLA; a declaration of the City of Albion's liability for future response costs to be incurred by the United States pursuant to Section 113(g)(2) of CERCLA; and civil penalties pursuant to Section 106(a) of CERCLA for failure of the City of Albion to comply with an administrative order issued by U.S. EPA.

The United States objects to this subpart to the extent that it violates the attorney work product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File and the Active Site file, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. Notwithstanding and without waiving any objections, Plaintiff directs Defendant's attention to the response to Interrogatory 9. The United States' search for responsive documents continues.

INTERROGATORY NO. 9:

9. Identify all persons whom U.S. EPA issued requests for

NOT PREP
SEARCH FILES

information pursuant to CERCLA Section 104(e), 42 U.S.C. 9604(e), and all documents relating thereto.

RESPONSE:

9. The United States objects to this Interrogatory insofar as the request for "all documents relating thereto" is vague and ambiguous, and objects further in that the request is overly broad and unduly burdensome. The United States also objects on the grounds that the material sought in this Interrogatory is not relevant to the instant proceeding.

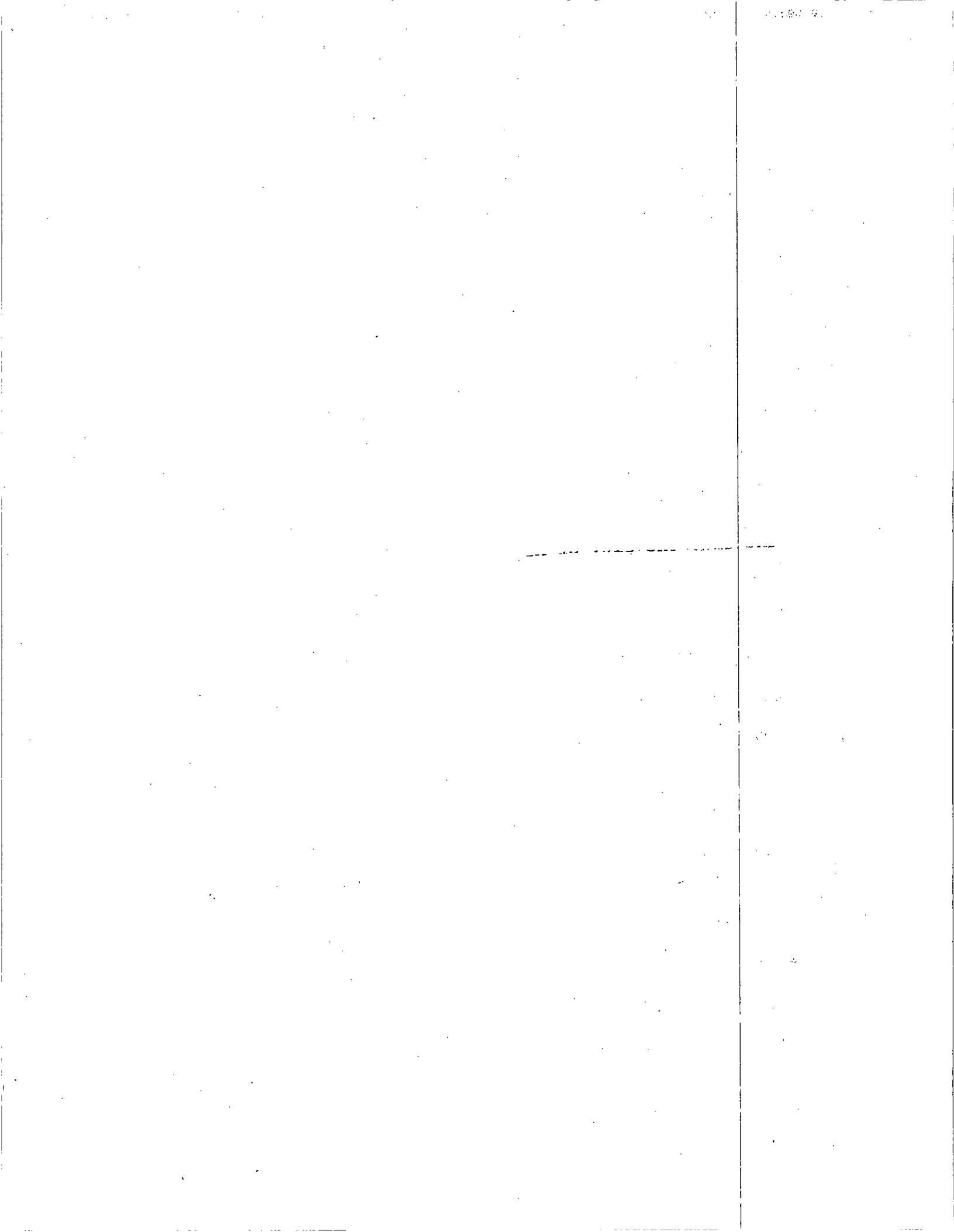
Notwithstanding and would waiving the foregoing objections, the United States will answer the first portion of the Interrogatory. If defendant wishes, the documents responsive to the second portion will be made available at a pre-arranged time at the Region 5 Records Center. Subject to and without waiving the foregoing objections, the United States answers as follows:

City of Albion
Albion Sanitary Service
Albion Metal Products
Albion Radiator Service
Albion College
Albion Ford-Mercury
Billicke Oldsmobile Sales, Inc.
Brooks Foundry
Bundy Mechanical
City Disposal Corporation
Clark Oil Company / Apex Oil Company
Concord Township
Corning Glass Works
George Chambers

Albion Township
Blah's Refuse
Evans Body Shop
Turner Sanitation Service

1. *Pharmaceuticals* (1998) 10, 11.

Clarence Township
Concord Township
Harold & Isabell Driscoll
Decker Manufacturing
Eagle-Pitcher Industries f/k/a Union Steel
Evans Body Shop
Joe Fitzpatrick
Frahm Chevrolet, Buick, Pontiac
Harvard Industries/ Hayes-Albion Corporation
Haines Auto Service
Harrison's Car Care Center
Village of Homer
Ideal Casings
Jim's Standard
Kinsey Automotive Center
McGraw Edison / Cooper Industries
Mel's Auto Sales
Mike Egnatuck c/o Shell Food Mart
M&R Services
~~Gerald & Christine Munief~~
Ed Nieko Body Shop
Robert Norton / B&D Auto Repair
Nelson Chemical (uncollected)
Plassman & Company
Luster & Ollie Mae Prater
Parma Township
Professional Refuse Service
Jerome Richardson
Sheridan Industries
Sheridan Township
Springport Township
Scotts Disposal Service
Seiler Tank Truck Service
Steel Products, Inc
Gordon Stevick
Thompson's Brake Service
Waste Management of Battle Creek / Refuse Service Inc.
Wes' Automotive Service
Wolf's Auto Repair
Zephyr, Inc
Zick's Body Shop



INTERROGATORY NO. 10:

10. Identify all documents and persons with knowledge relating to the allegation in Paragraph 6 of the Complaint that Defendant "contracted with the Site owner to operate the Albion-Sheridan Landfill Site . . ."

RESPONSE:

10. Please see the United States' Response to Request for Production of Documents No. 3, and the accompanying documentation.

INTERROGATORY NO. 11:

11. Identify all facts, reasons, documents, and persons with knowledge relative to the allegations of Paragraph 8 of the Complaint that the city of Albion "maintained control over and had responsibility for the use of the Site. . ."

RESPONSE:

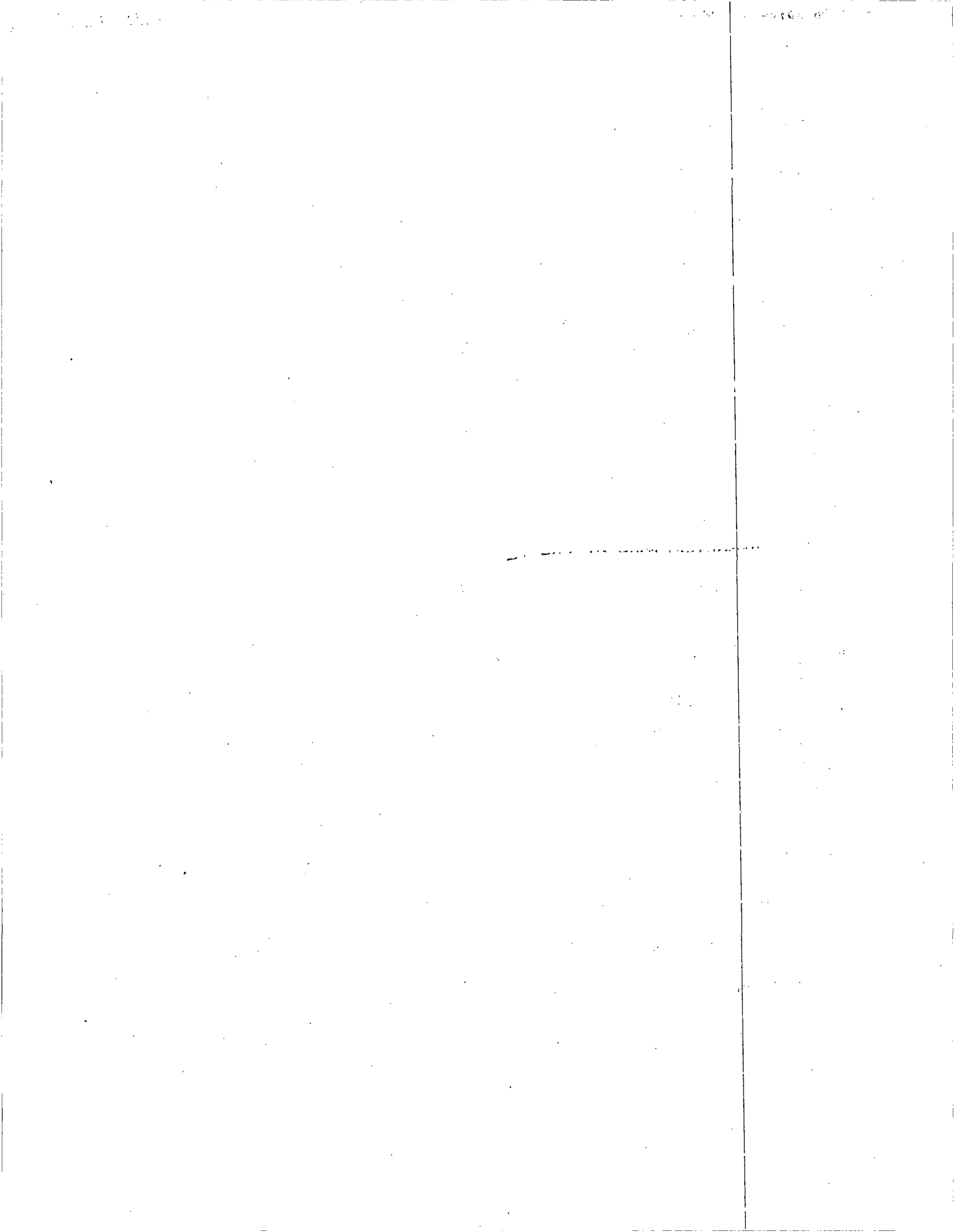
Please see the United States' response to Request for Production of Documents No. 3, and the accompanying documentation.

INTERROGATORY NO. 12:

12. Does Plaintiff allege that Defendant has any responsibility for the alleged disposal of "industrial wastes" (Complaint Paragraph 9) at the Sheridan Township Landfill Site? If so, identify all facts, reasons, documents, and persons with knowledge relating to such allegation.

RESPONSE:

12. The United States alleges that as an operator of the site, the City of Albion is responsible for the disposal of



industrial wastes at the site. The United States refers Defendant to documents produced in the Response to Request for Production of Documents No. 3, wherein in contract documents (a), (b) and (c) the language is included which states:

WHEREAS, the City Council of the City of Albion, Michigan, a Municipal Corporation, desires to continue to provide and maintain a waste yard for the use of City of Albion residents and industries . . .

The United States refers Defendant to other documents and persons referred to in its Response to Request for Production of Documents No. 3 and Response to Interrogatory No. 1. The United States investigations of the facts continues.

INTERROGATORY NO. 13:

13. Identify any and all notices of violation issued by the Michigan Department of Natural Resources (MDNR) or any other governmental agency in conjunction with the landfill operations at the Site during its operation, and all persons with knowledge of any such notices.

RESPONSE:

13. The United States objects to this question on the grounds that "any and all" makes the inquiry overly broad, unduly burdensome, and oppressive.

The United States is not aware of any notices of violation issued by the Michigan Department of Natural Resources.

INTERROGATORY NO. 14:

14. Does Plaintiff allege that the City of Albion is responsible for the "hazardous substances" which were allegedly "spilled, leaked, discharged, or otherwise disposed of at the Site" (Complaint paragraph 14)? If so, identify all facts, reasons, documents and persons with knowledge supporting such allegation.

RESPONSE:

14. The United States alleges that the City of Albion is responsible insofar as it was an operator of the Site during the relevant period. Please see the documents attached hereto provided in response to Defendant's discovery. In addition, Plaintiff refers defendant to the Administrative Record and the Active Site File for the Site.

INTERROGATORY NO. 15:

15. Identify all facts, reasons, documents and persons with knowledge relating to the allegation in Paragraph 19 of the Complaint that "Defendant City of Albion operated the Site at the time of disposal of hazardous substances. . ."

RESPONSE:

15. The United States repeats the objections stated in the General responses and Objections above. Notwithstanding and without waiving its objections, Plaintiff refers Defendant to the facts and documents in the Administrative Record and Active Site File for the Site. In addition, please see the United States' Response to Request for Production of Documents No. 3, and the

accompanying documents.

INTERROGATORY NO. 16:

16. Identify all facts, reasons, documents, and persons with knowledge supporting the allegation that the Site posed an "imminent and substantial endangerment to the public health or welfare or the environment" as of October 11, 1995, issuance of the U.S. EPA Unilateral Administrative Order.

RESPONSE:

16. The United States repeats the objections stated in the General responses and Objections above. Notwithstanding and without waiving its objections, Plaintiff refers Defendant to the facts and documents in the Administrative Record and Active Site File for the Site. In addition, please see the Unilateral Administrative Orders dated March 19, 1990 and October 11, 1995.

INTERROGATORY NO. 17:

17. Identify all documents and persons with knowledge supporting the consistency of Plaintiff's claimed "response costs" with the National Contingency Plan ("NCP") 40 C.F.R. Part 300.

RESPONSE:

17. Plaintiff repeats the objections stated in the General Responses and Objections, above. Plaintiff also objects to this Interrogatory on the ground that this Request seeks production of information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. In an action by

the United States, the defendant has the burden of demonstrating inconsistency with the National Contingency Plan, and the defendant in such an action may not shift to the United States the burden of proof on this issue. Plaintiff also objects to this Document Request to the extent it seeks discovery on legal issues. Plaintiff further objects to this Document Request to the extent it seeks discovery of any issues subject to review solely on an Administrative Record. Plaintiff objects further to the extent that this request seeks production of documents that are protected by the attorney client privilege and the attorney work product privilege. Notwithstanding and without waiving these objections, Plaintiff responds by directing Defendant's attention to documents in the Administrative Record File, the Active Site file and the cost documentation and summaries for the Site, some of which you have been provided and to which your attention is directed. Plaintiff stands prepared to provide Defendant with access and copying of documents in the Administrative Record File and the Active Site File located at the EPA Superfund Division Records Center, Region 5 (5J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at a mutually convenient time. The United States' search for responsive documents continues.

DRAFT

Notwithstanding and without waiving these objections, Jon Peterson and Leah Evison, Regional Program Managers, will testify that the United States' response costs are not inconsistent with the National Contingency Plan.

INTERROGATORY NO. 18:

18. Identify all witness statements, interviews and depositions taken by, for or provided to Plaintiff or U.S. EPA with regard to the Site.

RESPONSE:

18. The following persons were deposed on the dates indicated by U.S. EPA personnel in the mater of the Albion-Sheridan Township Landfill.

1. Deposition of William Rieger on June 4, 1992.
2. Deposition of Arlo Wilkerson on May 24, 1990;
3. Deposition of Lloyd Mosher on July 26, 1991;
4. Deposition of Vernon Wainwright on June 3, 1992;
5. Deposition of Donald Hull on June 4, 1992;

The United States attaches copies of the deposition transcripts to these discovery responses.

INTERROGATORY NO. 19:

19. As to any of the accompanying Requests to Admit which Plaintiff does not unequivocally admit, identify all facts, reasons, documents and persons with knowledge to support Plaintiff's denial of the Request to Admit.

RESPONSE:

19. Please see Plaintiff's Responses to the City of Albion's First Request for Admissions.

PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

1. Admit that City of Albion is not and was not the "owner" of the Sheridan Township Landfill Site at issue in the Complaint in the captioned action (the "Site").

RESPONSE:

1. Admitted insofar as the City of Albion was not the title holder to the Albion-Sheridan Township Landfill Site, based upon information available to U.S. EPA to date.

REQUEST FOR ADMISSION NO. 2:

2. Admit that Gordon Stevick was the owner of the Sheridan Township Landfill Site during all pertinent times.

RESPONSE:

2. Admitted that Gordon Stevick was the title holder to the Albion-Sheridan Township Landfill Site.

REQUEST FOR ADMISSION NO. 3:

3. Admit that Gordon Stevick operated the Sheridan Township Landfill Site during all pertinent times.

RESPONSE:

3. Admitted insofar as Gordon Stevick operated the Albion-Sheridan Township Landfill Site in conjunction with the City of Albion, pursuant to contractual agreements between Gordon D. Stevick and the City of Albion during the period 1966-1981.

REQUEST FOR ADMISSION NO. 4:

4. Admit that the Sheridan Township Landfill Site is located in Sheridan Township, Michigan, and not within the City of Albion.

RESPONSE:

4. Admitted.

REQUEST FOR ADMISSION NO. 5:

5. Admit that the City of Albion is not and was not a tenant, lessee, or holder of any other real estate interest in the Sheridan Township Landfill Site.

RESPONSE:

5. Admitted based upon information available to U.S. EPA to date. However, the City of Albion had a purchase option on parcels of the Albion-Sheridan Township Landfill Site in its May 24, 1966 Agreement with Gordon D. Stevick, and a lease option on certain parcels in its June 26, 1972 Agreement with Gordon D. and Marguerite M. Stevick.

REQUEST FOR ADMISSION NO. 6:

6. Admit that Gordon Stevick, not the City of Albion, was licensed or permitted by the State of Michigan to operate the Site as a landfill.

RESPONSE:

6. Admitted. Gordon Stevick was permitted by the State of Michigan to operate the Albion-Sheridan Township Landfill Site. Plaintiff has no information as to whether the City of Albion was

permitted by the State of Michigan to operate the Albion-Sheridan Township Landfill Site.

REQUEST FOR ADMISSION NO. 7:

7. Admit that the City of Albion did not exercise actual and substantial control of the day-to-day waste disposal activities at the Site.

RESPONSE:

7. Denied. The meeting notes from the Proceedings of the Albion City Council's meetings indicate the exercise of actual and substantial control over the day-to-day waste disposal activities at the Site. (Please see Response to Request for Production of Documents No. 3.)

REQUEST FOR ADMISSION NO. 8:

8. Admit that neither Gordon Stevick, nor any Landfill employees, were employed by the City of Albion in connection with the Site disposal activities at issue.

RESPONSE:

8. Admitted.

REQUEST FOR ADMISSION NO. 9:

9. Admit that no City of Albion employee ever worked at the Sheridan Township Landfill in connection with the Site disposal activities at issue within the scope of their employment with the City of Albion.

RESPONSE:

9. Admitted based on information available to U.S. EPA to

date is concerned. However, according to the March 1, 1975 contract between Gordon Stevick and the City, the Director of Public Works was authorized to place requirements upon the operation in the scope of his or her employment. See e.g., Agreement between the City of Albion and Gordon D. Stevick, dated March 1, 1975, pg. 2, ¶ 5, and Agreement between the City of Albion and Gordon D. and Marguerite M. Stevick, dated May 24, 1966, pg. 2, ¶ 5.

REQUEST FOR ADMISSION NO. 10:

10. Admit that Gordon Stevick maintained contracts or arrangements with multiple municipalities, businesses and persons located both within and outside the City of Albion for waste disposal at the Site.

RESPONSE:

10. Admitted that Gordon Stevick was authorized by his contracts with the City of Albion to accept waste from other entities. Acceptance of wastes from several entities is acknowledged by the City of Albion in various minutes of Proceedings of the Common Council of the City of Albion. See Response to Request for Production of Documents No. 3. The United States does not possess information regarding any particular contracts or arrangements Gordon Stevick may have entered into with other entities.

DRAFT**REQUEST FOR ADMISSION NO. 11:**

11. Admit that the U.S. Environmental Protection Agency ("U.S. EPA") identified other potentially responsible parties ("PRPs") for the Sheridan Township Landfill Site, but did not join those other persons in this litigation.

RESPONSE:

11. Admitted.

REQUEST FOR ADMISSION NO. 12:

12. Admit that the City of Albion timely responded to the U.S. EPA Unilateral Administrative Order issued October 11, 1995.

RESPONSE:

12. Admitted.

REQUEST FOR ADMISSION NO. 13:

13. Admit that the City of Albion's response to the October 11, 1995, U.S. EPA Unilateral Administrative Order denied liability but offered a compromise resolution.

RESPONSE:

13. Denied. There is no compromise proposed in the December 11, 1995 response to the UAC. The City of Albion made a settlement offer in its November 5, 1995 letter which was wholly unacceptable and disproportionate to the City of Albion's liability with respect to the Albion-Sheridan Township Landfill Superfund Site.

REQUEST FOR ADMISSION NO. 14:

14. Admit that the City of Albion had "sufficient cause" for any failure to comply with the October 11, 1995, U.S. EPA

Unilateral Administrative Order.

RESPONSE:

14. Denied. The City of Albion based its "sufficient cause" defense on the assertion that the City was not an operator of the site. As this issue is at the center of the litigation, United States obviously disagrees with the City's position. See letter of George Davis on behalf of the City, dated December 11, 1995.